



CHRIS KAPENGA

WISCONSIN STATE SENATOR

Senate Bill 541 Testimony

Senate Committee on Public Benefits, Licensing, and State-Federal Relations
Wednesday November 20th, 2019

Thank you committee members for hearing testimony on Senate Bill 541 relating to creating a sunrise review process for newly proposed occupational licenses. I also want to thank Representative Hutton for authoring this bill in the Assembly.

Nationwide, there is a bipartisan effort to rethink occupational licensing laws. Policy experts across the political spectrum have identified the dramatic increase in licensed professions as a primary issue facing workers today. According to the Obama Administration's 2015 occupational licensing report, licensure reduces employment opportunities, lowers wages, and increases costs for consumers. The same report also noted that some studies showed no increase in quality, "suggesting that consumers are sometimes paying higher prices without getting improved goods or services." Groups such as the Brookings Institute and the Obama White House to groups such as the Institute for Justice, The Badger Institute, and the Wisconsin Institute for Law & Liberty have all released reports outlining the problems that can come with licensure as well as recommending changes like this as a solution.

In 1996, Wisconsin created its 93rd occupational license. Since then, the number of occupations requiring a license in Wisconsin has ballooned to 166, a 78% increase in licensed professions over the last twenty years. This bill creates the sunrise review process whereby the Department of Safety and Professional Services would prepare a review of bills that create new occupational regulations for occupations that are not currently regulated. However, we are currently considering a change to move this responsibility to one of the legislative service agencies instead. This legislation does not impact any existing licensed occupations, rather it provides lawmakers with helpful information as they consider new occupational licenses and the impact on the public as well as the professionals who are employed in the field.

Sunrise reports act as a cost-benefit analysis, much like a fiscal effect report, to comprehensively review the impact of the new regulations before they are enacted. By passing this bill, Wisconsin would join 13 other states that are currently utilizing this process. Sunrise reports analyze if there is any reasonable public benefit, if a less restrictive form of occupational regulation is more appropriate, how other states regulate the field, any financial burden that will be imposed on the individual, etc. For example, in Colorado, they have completed twenty sunrise reports since 2012, and found that only five could be expected to actually provide a benefit to public. This session alone we have had five bills that propose creating a license for a profession. Given all of the warning signs concerning the growth of occupational regulation, we as legislators ought to have the most complete information available before creating additional financial and educational barriers to employment, and SB 541 will ensure that we do.

Thank you Chair and Committee members for your time and consideration of this bill. At this time I will gladly answer any questions from the committee.



Rob Hutton

STATE REPRESENTATIVE • 13TH ASSEMBLY DISTRICT

November 20, 2019

To: The Senate Committee on Public Benefits, Licensing and State-Federal Relations
From: Rep. Rob Hutton
Re: Senate Bill 541

Testimony of Rep. Rob Hutton in Support of Senate Bill 541

Thank you Chairman Kapenga and the Committee on Public Benefits, Licensing, and State-Federal Relations for hearing SB 541 today.

Recent years have seen a significant increase in the number of occupational licenses in Wisconsin. Since 1996 Wisconsin has seen a 78% increase in the number of occupational licenses. Some of these licenses have been helpful in providing protections for our citizens while some have simply served to prevent well qualified individuals from being able to obtain employment and provide for their families.

While policy makers may have a basic understanding of what a specific occupational license may accomplish, many times, at the time of introduction there is a lack of information and understanding about how a proposed occupational license will affect the workforce. This bill attempts to remedy that issue by requiring DHS to prepare a report for a proposed license that will look at five criteria in order to provide the legislature with more information on how the license will affect a given profession.

By having more detailed information at the time an occupational license is proposed, policymakers will be able to make better informed decisions about the necessity of a particular license.

This bill is common sense bipartisan legislation that has been passed by fourteen states across the country. This piece of legislation will lead to better understanding of how our decisions affect those seeking to enter the workforce.

Thank you again for the opportunity to testify. I look forward to answering any questions you may have.

WISCONSIN OCCUPATIONAL LICENSING: BARRIERS TO OPPORTUNITY AND PROSPECTS FOR REFORM

Matthew D. Mitchell, PhD

Director and Senior Research Fellow, Equity Initiative, Mercatus Center at George Mason University

Senate Committee on Public Benefits, Licensing, and State-Federal Relations

November 20, 2019

Chair Kapenga, Vice Chair Craig, and distinguished members of the committee:

My name is Matthew Mitchell. I am an economist and a senior research fellow at the Mercatus Center at George Mason University, where I direct the Equity Initiative. Mercatus scholars working on the Equity Initiative study public policies that favor particular firms, industries, or occupations. In recent years, my colleagues and I have been studying occupational licensing laws, and I am grateful for the opportunity to discuss our findings with you.

Attached is a report that my colleagues and I submitted to the Federal Trade Commission, “The Effects of Occupational Licensure on Competition, Consumers, and the Workforce.” The report details the now-voluminous economic literature on the deleterious effects of occupational licensure and suggests a blueprint for reform.

In my testimony, I wish to focus on three points:

1. Licensing is a substantial barrier to employment, particularly for certain populations such as lower-income Americans or the spouses of active-duty military personnel.
2. Licensing does little to enhance either consumer safety or the quality of services; it does, however, increase prices for consumers.
3. Successful reform is difficult, but not impossible. Policymakers must be able to cast conspicuous votes in the general interest while special interest power must be limited.

LICENSURE IS A SUBSTANTIAL BARRIER TO EMPLOYMENT, ESPECIALLY FOR CERTAIN POPULATIONS

Licensing represents a significant and growing barrier to work. Nationally, the share of the workforce that is required to have an occupational license has increased more than fourfold in the past 50 years. As of 2015, nearly one in five working Wisconsinites—about 18 percent of the state’s workforce—was required to be licensed.¹ As licensing burdens have increased nationwide, they seem to have depressed interstate migration of those in licensed professions. Economists Janna Johnson and Morris Kleiner

¹ Morris M. Kleiner, *Reforming Occupational Licensing Policies* (Washington, DC: The Hamilton Project at the Brookings Institution, March 2015), 9.

estimate that between-state migration of those who are licensed is 36 percent lower than that of members of other professions.² And in separate research, Kleiner and Evgeny Vorotnikov estimate that licensure may cost between 1.8 and 1.9 million jobs, result in between \$6.2 billion and \$7.1 billion in lost output, and create a misallocation of resources that costs the US economy between \$183.9 billion and \$197.3 billion each year.³ In Wisconsin alone, they estimate that licensure has eliminated more than 37,000 jobs, has resulted in \$133 million in lost annual output, and has created a \$3.7 billion annual misallocation of resources.⁴

Aspiring entrants to a large number of professions—ranging from travel guide and taxidermist to cosmetologist—are now required by the state of Wisconsin to obtain a government-issued license to work. It can take months and hundreds or even thousands of dollars to obtain these licenses. Among 42 low- to moderate-income occupations licensed by Wisconsin, the average aspiring worker is required to spend 214 days in training and pay \$259 in fees before he or she may obtain a license.⁵ These fees do not include either the cost of the education or the income that people forgo when they spend months in often-unnecessary training. According to the Institute for Justice, Wisconsin’s licensing laws are the 36th most broad and onerous in the country.

Licensure is often arbitrary. As shown in table 1, licensing requirements often don’t match the risk posed to the public by insufficiently trained professionals in certain industries. Compared with emergency medical technicians, aspiring cosmetologists in Wisconsin must undergo *10 times* as many months of training; would-be sign language interpreters (who are unlicensed in 29 states) must complete more than *40 times* as much training; and veterinary technicians (unlicensed in 15 states) must complete more than *20 times* as much training.

TABLE 1. OCCUPATIONAL TRAINING MISMATCHES IN WISCONSIN

| Occupation | States That License This Profession | Fees | Days of Education/Experience |
|------------------------------|-------------------------------------|-------|------------------------------|
| Sign language interpreter | 22 | \$750 | 1,469 |
| Athletic trainer | 49 | \$375 | 1,460 |
| Veterinary technician | 36 | \$475 | 730 |
| Shampooer | 37 | \$391 | 233 |
| Cosmetologist | 51 | \$391 | 362 |
| Massage therapist | 44 | \$345 | 140 |
| Barber | 51 | \$391 | 233 |
| Makeup artist | 41 | \$391 | 105 |
| Skin care specialist | 50 | \$391 | 105 |
| Emergency medical technician | 51 | \$80 | 35 |

Source: Dick M. Carpenter II et al., *License to Work: A National Study of Burdens from Occupational Licensing*, 2nd ed. (Arlington, VA: Institute for Justice, November 14, 2017), 142–43.

² Janna E. Johnson and Morris M. Kleiner, “Is Occupational Licensing a Barrier to Interstate Migration?,” (NBER Working Paper No. 24107, National Bureau of Economic Research, Cambridge, MA, December 2017).

³ Morris M. Kleiner and Evgeny S. Vorotnikov, *At What Cost? State and National Estimates of the Economic Costs of Occupational Licensing* (Arlington, VA: Institute for Justice, November 2018), 5.

⁴ Kleiner and Vorotnikov, *At What Cost?*, 48.

⁵ Dick M. Carpenter II et al., *License to Work: A National Study of Burdens from Occupational Licensing*, 2nd ed. (Arlington, VA: Institute for Justice, November 14, 2017), 142.

Licensing boards are often dominated by members of the professions they oversee. Ninety-three percent of Wisconsin occupational licensure boards are required by law to have a majority of their members work in the professions they oversee.⁶ See table 2 for board composition data in a sample of Wisconsin boards. Owing to vacancies or a lack of specificity, some boards may be composed entirely of industry insiders, while on other boards, industry insiders have a governing majority. This presents a legal concern in light of the US Supreme Court’s decision in *North Carolina State Board of Dental Examiners v. FTC*, which held that states may be liable for antitrust violations when boards are dominated by members of the professions they oversee and when elected officials fail to actively supervise these boards.⁷ It also creates a practical concern that boards will tend to act as industry cartels, controlling entry of new members rather than ensuring public safety.

TABLE 2. COMPOSITION OF SELECT WISCONSIN BOARDS

| Board/Council | Statutory Board Composition | | | Actual Board Composition | | |
|--|-----------------------------|-------|------------------|--------------------------|-------|------------------|
| | Industry Members | Total | Percent Industry | Industry Members | Total | Percent Industry |
| Respiratory Care Practitioners Examining Council ^a | 3 | 5 | 60% | 3 | 3 | 100% |
| Athletic Trainers Affiliated Credentialing Board ^b | 5 | 6 | 83% | 5 | 5 | 100% |
| Occupational Therapists Affiliated Credentialing Board ^c | 5 | 7 | 71% | 4 | 5 | 80% |
| Hearing and Speech Examining Board ^d | 8 | 10 | 80% | 6 | 7 | 86% |
| Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board ^e | 10 | 13 | 77% | 10 | 11 | 91% |

^a Wis. Stat. Ann. § 15.407(1)(m) (West 2019).

^b Wis. Stat. Ann. § 15.406(4) (West 2019).

^c Wis. Stat. Ann. § 14.406(5) (West 2019).

^d Wis. Stat. Ann. § 15.405(6)(m) (West 2019).

^e Wis. Stat. Ann. § 15.405(7)(c) (West 2019).

Licensing reduces employment opportunities, especially among certain communities. High barriers to employment pose particular difficulties to lower-skilled, lower-educated populations, to immigrants, to those with criminal records, and to those who move frequently, such as military spouses. Eighty percent of the studies Mercatus scholars reviewed found that licensure has a disparate impact on minorities.⁸ Recent research finds that in countries with more barriers to entering business, measured income inequality is greater.⁹ Separate research finds that in states with greater growth in licensure for low- to

⁶ Rebecca Haw Allensworth, “Foxes at the Henhouse: Occupational Licensing Boards Up Close,” *California Law Review* 105, no. 6 (December 2017): 1609.

⁷ *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (2015).

⁸ Patrick A. McLaughlin, Matthew D. Mitchell, and Anne Philpot, “The Effects of Occupational Licensure on Competition, Consumers, and the Workforce” (Mercatus on Policy, Mercatus Center at George Mason University, Arlington, VA, November 2017), 7.

⁹ Patrick A. McLaughlin and Laura Stanley, “Regulation and Income Inequality: The Regressive Effects of Entry Regulations” (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016).

moderate-income occupations there is less absolute income mobility, as measured by the chances that an individual raised in a relatively low-income household will move up the income distribution.¹⁰

Licensure presents an especially steep employment barrier for military spouses. About 35 percent of working military spouses are either licensed or certified.¹¹ And compared with the broader population, military spouses are 10 times more likely to have moved across a state line in the past year.¹² When military spouses were asked to name the biggest challenges to employment, 22 percent identified the inability to transfer their professional licenses from one state to another.¹³ This helps to explain why, in 2017, the military spouse unemployment rate was 16 percent, nearly four times the national average.¹⁴

LICENSURE DOES NOT SEEM TO INCREASE QUALITY OR SAFETY, BUT IT DOES RAISE PRICES

There is little evidence that licensure increases either the quality of services or the public's safety.

Theoretically, licensure might increase quality if it acts as a well-designed screening system. On the other hand, it might decrease quality by limiting competition. Reviews of the academic literature by scholars at the Mercatus Center and by officials in the Obama administration suggest that the two effects roughly cancel each other out (though more studies find that licensure reduces quality than find that it enhances it).¹⁵

There is abundant evidence that licensure raises prices. Economic theory is unambiguous: supply restrictions such as licensure tend to raise prices. And the evidence supports this theory. A Mercatus assessment of 19 peer-reviewed studies found that licensure was associated with higher prices in all 19.¹⁶ Reviewing many of the same studies, Obama administration officials similarly concluded that the association between licensing and higher prices is “unequivocal.”¹⁷

SUCCESSFUL REFORM IS DIFFICULT BUT NOT IMPOSSIBLE

Licensing reform efforts are difficult to implement successfully. The consumers and the aspiring professionals who suffer from anticompetitive licensing regimes are numerous and typically politically unorganized. On the other hand, the industry insiders who benefit from these regimes are comparatively few in number and typically well organized. Economists and political scientists have long blamed this pattern of diffuse costs and concentrated benefits for the persistence of inefficient and inequitable policy.¹⁸ This pattern has made licensing reform an uphill battle, even though experts across the political spectrum tend to agree that current licensing laws are inefficient and anticompetitive.

¹⁰ Brian Meehan, Edward Timmons, and Andrew Meehan, *Barriers to Mobility: Understanding the Relationship between Growth in Occupational Licensing and Economic Mobility* (Washington, DC: Archbridge Institute, 2017).

¹¹ US Department of the Treasury and US Department of Defense, *Supporting Our Military Families: Best Practices for Streamlining Occupational Licensing Across State Lines*, February 2012, 3.

¹² US Department of the Treasury and US Department of Defense, *Supporting Our Military Families*.

¹³ US Chamber of Commerce Foundation, *Military Spouses in the Workplace: Understanding the Impacts of Spouse Unemployment on Military Recruitment, Retention, and Readiness*, June 2017, 10.

¹⁴ US Chamber of Commerce Foundation, *Military Spouses in the Workplace*, 7. There are other explanations too. For example, 41 percent of military spouses believe that employers are reluctant to hire workers who might move.

¹⁵ US Department of the Treasury, Council of Economic Advisers, and US Department of Labor, *Occupational Licensing: A Framework for Policymakers*, July 2015, 13; McLaughlin, Mitchell, and Philpot, “The Effects of Occupational Licensure,” 4.

¹⁶ McLaughlin, Mitchell, and Philpot, 5.

¹⁷ Department of the Treasury et al., *Occupational Licensing: A Framework*, 14.

¹⁸ See, for example, Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups*, Second Printing with New Preface and Appendix, Revised (Cambridge, MA: Harvard University Press, 1971); Theodore J. Lowi, *The End of Liberalism: The Second Republic of the United States*, 40th anniversary ed. (New York: W. W. Norton & Company, 1969); James Wilson, *Bureaucracy: What Government Agencies Do And Why They Do It* (New York: Basic Books, 1991).

Drawing lessons from successful reform. Despite the advantages enjoyed by special interests, history affords a number of examples in which the general interest has prevailed.¹⁹ In areas as varied as trade, race-based policies, and airline policy, special interests have occasionally lost their privileges while general and diffuse interests have benefitted from a more level and open playing field.

There are a number of important lessons to draw from these cases.²⁰ But perhaps the most important is that institutional reforms must permit policymakers to cast conspicuous votes in the general interest and limit the power of special interests to dominate the process.

In the case of occupational licensing, some potential reforms follow this pattern:

1. *An independent commission.* One potential reform would be to establish an independent commission. It should be comprised of experts familiar with the economic literature on licensure and with no financial stake in the current regime. It should be charged with identifying and eliminating burdensome and anticompetitive licensing laws. And, ideally, lawmakers should be bound to take its advice in whole or not at all. This type of structure can ensure that state licensing regimes serve the general interests of the public and not the special interests of protected industries. More details on this approach can be found in the attached report.
2. *Requiring less restrictive means of regulation.* The state of Nebraska recently adopted a reform that highlights a different approach.²¹ There, the Occupational Board Reform Act of 2018 requires legislative committees to review 20 percent of licenses under their jurisdiction each year and all licenses under their jurisdiction every five years. The review process requires committees to gather information on the number of licenses boards have “issued, revoked, denied, or assessed penalties against” and the reasons for these actions. It also requires committees to review board composition, assess board activities, and to compare these activities with the way other states regulate occupations.

Most importantly, the act stipulates that licenses are warranted only when they address “present, significant, and substantiated harms,” and if such a harm is found to exist, the legislation requires policymakers to use the “least restrictive” regulation necessary to protect consumers from undue risk. Finally, the act establishes the following hierarchy of regulations, from least restrictive to most restrictive:

1. Market competition
2. Third-party or consumer-created ratings and reviews
3. Private certification
4. Specific private civil cause of action to remedy consumer harms
5. Deceptive trade practices under the Uniform Deceptive Trade Practices Act
6. Mandatory disclosure of attributes of the specific goods or services
7. Regulation of the process of providing the specific goods or services to consumers
8. Inspection
9. Bonding or insurance

¹⁹ See Matthew D. Mitchell, “Overcoming the Special Interests That Have Ruined Our Tax Code,” in *For Your Own Good: Taxes, Paternalism, and Fiscal Discrimination in the Twenty-First Century*, ed. Adam Hoffer and Todd Nesbit (Arlington, VA: Mercatus Center at George Mason University, 2018), 327–50.

²⁰ Again, see Mitchell, “Overcoming the Special Interests.” But briefly, these lessons are (1) ideas matter, especially in the long run, (2) institutions matter too, (3) go for the “grand bargain,” (4) reform requires good leaders, (5) sometimes it takes a special interest to beat a special interest, (6) ensure the right ideas are available when opportunities arise, and (7) embrace permissionless innovation.

²¹ Legis. B. 299, 105th Leg., 2nd Sess. (Neb. 2018).

10. Registration
 11. Government certification
 12. Occupational licensure
3. *Reversing the burden of proof.* Arizona has taken a third approach.²² There, the recently-passed Right to Earn a Living Act strengthens existing law, which had declared that “the right of individuals to pursue a chosen business or profession, free from arbitrary or excessive government interference, is a fundamental civil right,” and had directed courts to “apply heightened judicial scrutiny to cases involving occupational licenses and the right to earn a living.”

The new act stipulates that “any person may file an action in a court of general jurisdiction to challenge an occupational regulation” and creates a presumption *against* a state agency’s authority unless the regulation is “demonstrated to be necessary to specifically fulfill a public health, safety, or welfare concern.” The law clarifies that “health, safety or welfare . . . does not include the protection of existing businesses . . . against competition.” These new provisions provide an avenue of relief to individuals harmed by occupational licensing and create a new accountability mechanism for regulators.

4. *Recognition of out-of-state licensure for active duty and military spouses.* Because licensure imposes particularly steep burdens for peripatetic military personnel and their spouses, a number of states have moved to recognize the out-of-state licenses of these individuals. Utah, for example, recently permitted active duty military and their spouses to operate without a Utah license so long as they hold a current license from another state or jurisdiction and are in good standing with that other state or jurisdiction.²³ While this approach is certainly beneficial for this population, it fails to alleviate the burden borne by most licensed workers.²⁴
5. *Universal licensing recognition.* Another approach—also pioneered in Arizona—allows any state resident who is currently licensed by another state to obtain an occupational license in their state of residence.²⁵ While economists and antitrust officials have long recommended licensure portability, this proposal takes the idea a few steps further than other proposals.²⁶ Typically, licensure portability reforms have focused on particular professions, such as nursing, and have required multiple states to agree to an interstate compact. That type of reform may still be susceptible to the sort of regulatory capture problems that have long dominated state-level licensure.²⁷ *Universal licensure recognition, however, would allow legislators to serve the general public by easing licensure burdens while it would mitigate the sort of special-interest pleading that so often dominates regulatory reform. Interestingly, the previously-mentioned reform may be a stepping-stone to this reform. In Arizona, the universal recognition bill simply amended*

²² S. B. 1437, 53rd Leg., 1st Sess. (Ariz. 2017).

²³ S. B. 227, 62nd Leg., 1st Reg. Sess. (Utah 2018).

²⁴ Since both equity and freedom are worthy goals, there is a philosophical tradeoff here. When burdens are especially steep, piecemeal reforms may be desirable even if they increase inequity. On the other hand, when policy is especially inequitable, more equity may be worthwhile, even if it raises burdens. Beyond the philosophical tradeoffs, there may be political economy tradeoffs. For example, inequitable policy may lead to higher burdens by reducing the political pressure for reform. For a general discussion of nondiscriminatory policy, see James M. Buchanan and Roger D. Congleton, *Politics by Principle, Not Interest: Toward Nondiscriminatory Democracy* (Cambridge: Cambridge University Press, 1998).

²⁵ H. B. 2569, 54th Leg., 1st Reg. Sess. (Ariz. 2019).

²⁶ Bilal Sayyed, Tara Isa Koslov, and Karen A. Goldman, *Options to Enhance Occupational License Portability* (Washington, DC: Federal Trade Commission, 2018).

²⁷ George J. Stigler, “The Theory of Economic Regulation,” *Bell Journal of Economics and Management Science* 2, no. 1 (1971): 3–21; Brink Lindsey and Steven Teles, *The Captured Economy: How the Powerful Enrich Themselves, Slow Down Growth, and Increase Inequality* (New York: Oxford University Press, 2017). See chapter 5 of Lindsey and Teles in particular.

previous statutory language that had recognized the out-of-state licenses of active duty military and their spouses so that all Arizona residents with out-of-state licenses could operate.

None of these approaches are mutually exclusive. Indeed, they all reinforce one another and aim to correct for a natural imbalance that tends to favor concentrated and organized interests over diffuse and unorganized interests. Policymakers who value consumer protection, lower prices, and greater opportunities for employment—especially among lower-skilled and lower-educated populations—would do well to consider these reforms.

Thank you for the opportunity to share my research with you today. I look forward to answering any questions you may have.

Sincerely,

Matthew D. Mitchell, PhD
Director and Senior Research Fellow, Equity Initiative, Mercatus Center at George Mason University

ACKNOWLEDGMENT

I thank Anne Philpot for her careful research assistance. I also thank Jacob Fishbeck and Nita Ghei for excellent editorial suggestions. I am responsible for any errors or omissions that remain.

ATTACHMENT

“The Effects of Occupational Licensure on Competition, Consumers, and the Workforce” (Mercatus on Policy)

MERCATUS ON POLICY

The Effects of Occupational Licensure on Competition, Consumers, and the Workforce

Patrick A. McLaughlin, Matthew D.
Mitchell, and Anne Philpot

November 2017



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THE MERCATUS CENTER AT GEORGE MASON

University is dedicated to advancing knowledge about the impact of regulation on society. As part of its mission, the Mercatus Center conducts careful and independent analyses employing contemporary economic scholarship to assess rulemaking proposals from the perspective of the public interest. Thus, this Mercatus on Policy piece in response to questions from the Federal Trade Commission (FTC)¹ does not represent the views of any particular affected party or special interest group. Rather, it is designed to assist the commission as it weighs the costs and benefits of occupational licensing regulations. Our comments to the commission are derived from our recent state-specific occupational licensing studies.²

OCCUPATIONAL LICENSING REQUIREMENTS ACROSS TIME AND ACROSS STATES

The commission asks, “What is the state of empirical knowledge about the extent, growth, and stringency of state licensing requirements? To what extent are such requirements uniform or varied across the states? To what extent do they vary by occupation?”

Occupational licensing has expanded significantly over the last 50 years. In 1950, 5 percent of the workforce was licensed through state laws,³ and in 2000 that number approached 20 percent. When federal licenses are also accounted for, one estimate for 2006 is that 29 percent of the workforce was licensed.⁴ This growth in licensure arises primarily from the growth in the number of occupations for which a license is required by the state, not from people switching from jobs that do not require occupational licenses to jobs that do.⁵ While there is a great deal of variation across states in the number of occupations for which a license

is required as well as in the requirements to obtain a license, every state has seen an increase in both.

Patterns in occupational licensing requirements contradict the idea that licensure is primarily used to protect public safety. Occupations that are less likely to involve risk to the public are often more highly controlled than riskier occupations. Moreover, inconsistencies across state lines undermine the argument that certain occupations pose inherent safety risks.

On average, emergency medical technicians (EMTs) in the United States must complete 33 days of training and pass two exams before being licensed to work on an ambulance team.⁶ By contrast, the average interior designer must complete 2,190 days of education and experience—66 times the amount of training required of EMTs. Cosmetologists, too, are subject to a full 11 months more training than EMTs—averaging 372 days in total.⁷ Additional regulatory mismatches for particular states are listed in table 1.

Beyond the variation across occupations, there is also significant variation in licensing requirements for the same jobs across states. For example, the average HVAC contractor must complete 891 days of education and training.⁸ In Michigan, however, these contractors face even higher barriers

| Table 1. Occupational Training Mismatches, Select States | | |
|---|---------------------------------|-------|
| OCCUPATION | EDUCATION/ EXPERIENCE (DAYS) | EXAMS |
| ARKANSAS | | |
| Emergency medical technician | 28 | 2 |
| Message therapist | 117 | 2 |
| Makeup artist | 140 | 2 |
| Psychiatric technician | 210 | 1 |
| Cosmetologist | 350 | 2 |
| Teacher assistant | 730 | 0 |
| Fire alarm installer | 1,095 | 1 |
| Painting contractor | 1,825 | 1 |
| Preschool teacher | 1,825 | 3 |

| Table 1 (continued) | | |
|--------------------------------------|---------------------------------|-------|
| OCCUPATION | EDUCATION/ EXPERIENCE (DAYS) | EXAMS |
| MICHIGAN | | |
| Emergency medical technician | 26 | 2 |
| Cosmetologist | 350 | 2 |
| Barber | 467 | 2 |
| Veterinary technologist | 730 | 2 |
| Security guard | 1,095 | 0 |
| Athletic trainer | 1,460 | 1 |
| Security alarm installer | 1,460 | 1 |
| Preschool teacher | 1,825 | 2 |
| MISSOURI | | |
| Emergency medical technician | 23 | 2 |
| Skin care specialist | 175 | 2 |
| Psychiatric aide | 210 | 0 |
| Barber | 350 | 2 |
| Pest control applicator | 730 | 2 |
| Athletic trainer | 1,460 | 1 |
| Preschool teacher | 1,825 | 1 |
| WISCONSIN | | |
| Emergency medical technician | 28 | 2 |
| Manicurist | 70 | 2 |
| Makeup artist or skincare specialist | 105 | 2 |
| Message therapist | 140 | 2 |
| Cosmetologist or barber | 420 | 2 |
| Earth driller | 730 | 1 |
| Midwife | 730 | 1 |
| Veterinary technologist | 730 | 3 |
| Athletic trainer | 1,460 | 1 |
| Preschool teacher | 1,825 | 2 |

Source: Dick M. Carpenter II et al., License to Work: A National Study of Burdens from Occupational Licensing (Arlington, VA: Institute for Justice, April 24, 2012).

Patterns in occupational licensing requirements contradict the idea that licensure is primarily used to protect public safety.

to entry. Prospective HVAC contractors in Detroit must undergo nearly *seven months more training* than the national average—a total of 1,095 days—before beginning work. By comparison, their counterparts in Indianapolis can get to work much sooner, since Indiana does not require a license for HVAC contractors at all.⁹ The same is true of fire alarm installers in Arkansas: while they must accumulate 1,095 days of education and experience prior to being licensed, the rest of the country averages just 486 days, and 18 states have no experience or education minimums at all.¹⁰ In other words, aspiring fire alarm contractors in Tulsa can get to work three years sooner than their counterparts in Little Rock.

Regarding the differences in licensing across state lines, the commission asks, “Can the theoretical models help explain why some occupations are licensed in nearly every state while others are rarely licensed?”

If occupational licensing were governed solely by the logic of promoting public safety, the same types of activities would be regulated in similar ways across states. In reality, there is wide variation across states in terms of occupations regulated and the stringency of those regulations. Regulatory privilege accounts for some of these differences.

Writing in the *Harvard Journal of Law & Public Policy*, Paul Larkin Jr. notes a “curious and stubborn fact: Private individuals rarely urge governments to adopt licensing regimes, but private firms often do.”¹¹ This fact conforms with the economic theory of regulation, which suggests that incumbent providers may use licensure to limit competition.¹² By limiting supply and raising prices, these rules allow incumbent providers to earn artificially high profits—what economists refer to as *rent*. Indeed, the latest

research suggests that licensure raises the wages of licensees by about 14 percent.¹³ Occupational licensing is a privilege granted by a regulatory agency to incumbent providers.¹⁴

The social costs of this privilege are shouldered, in part, by consumers who have to pay higher prices than they would pay in more competitive markets. But the social costs also include the wages not earned by potential providers who are effectively excluded from the market by these regulations. With both the high prices for consumers and the forgone wages of would-be competitors, society is likely to experience a net loss from occupational licensing—what economists call *deadweight loss*. What’s more, incumbent professionals are willing to expend scarce resources convincing policymakers to contrive and maintain these privileges, a socially wasteful endeavor known as *rent-seeking*.¹⁵ Being few in number and established in their fields, these license holders generally find it easier to get politically organized than the large number of consumers and would-be competitors who are harmed by licensure.¹⁶

EMPIRICAL EVIDENCE ON OCCUPATIONAL LICENSING

The commission asks, “What is the best available evidence upon which policymakers might rely in deciding whether to adopt a new licensing regime? What is the best available evidence upon which policymakers might rely in deciding whether to reform or eliminate an existing licensing regime?”

Occupational licensing is ostensibly intended to protect the public from unsafe and low-quality service,

but there is little evidence this intention is realized. Rather, there is a growing consensus among economists that these rules serve to protect incumbent providers from competition by creating barriers for new entrants that lead to higher prices for consumers. We discuss this literature in the following sections.

The commission asks, “What is known about the effect of licensing restrictions on price, quality, access, and innovation for services and goods associated with licensed occupations?”

The evidence suggests two things: First, licensing requirements do not improve the quality of the goods and services provided by licensed occupations, and second, they exclude potential service providers who find the hurdles too costly to overcome. These hurdles limit competition for the incumbents in these protected trades, producing a doubly negative effect: Occupational licensing requirements keep able people from entering trades they could otherwise learn quickly and perform sufficiently well, limiting employment opportunities for people without advanced skills or degrees. In addition, protected industries can charge their customers higher prices than competitive industries, requiring low-income families to pay higher bills for basic services. Low-income consumers lose in particular. In the absence of licensure, a barber, for example, might offer discounted haircuts with fewer frills to those who would otherwise not be able to afford a higher-end haircut.

Licensure and Quality

Licensure is justified by legislators and advocates as necessary to protect the public from low-quality services or potential health risks.¹⁷ It is theoretically possible that a well-designed quality screening system will ensure that only high-quality professionals join an occupation. However, limiting the supply of professionals undermines competition. Less competition means lower quality and higher prices. As Morris M. Kleiner put it, licensure ensures that “prices and wages will rise as a result of restricting the number of practitioners, which should tend to

reduce quality received by consumers.”¹⁸ High prices may even push consumers out of the market entirely, inducing them to resort to far more risky do-it-yourself behavior. For example, one study found that more restrictive electrician licensing regimes are associated with fewer electricians per capita and that this, in turn, is associated with more accidental electrocutions.¹⁹

The true effect of licensure on quality is an empirical question, since economic theory suggests that licensure can have opposing effects on quality. Licensing requirements can increase quality by restricting entry only to highly-qualified professionals, or it can decrease quality by causing less competition, higher prices, and more do-it-yourself activities. A number of studies have assessed the effect of licensure on quality and the weight of evidence suggests that the two effects roughly cancel each other out. As Kleiner summarized in his review of the literature,

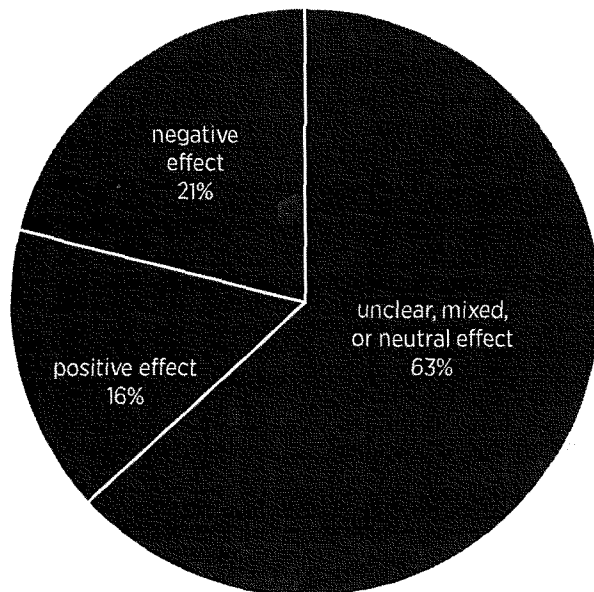
There is little to show that occupational licensure has a major effect on the quality of services received by consumers or on the demand for the services other than through potential price effects.²⁰

During the Obama administration, the Department of the Treasury, together with the Council of Economic Advisors and the Department of Labor, issued a report (henceforth referred to as the Treasury Department Report) including a review of the literature that concluded,

With the caveats that the literature focuses on specific examples and that quality is difficult to measure, most research does not find that licensing improves quality or public health and safety.²¹

Patrick McLaughlin, Jerry Ellig, and Dima Yazji Shamoun recently surveyed 19 studies assessing the effect of occupational licensure on quality.²² Figure 1 presents the results of their survey. As in the surveys by Kleiner and the Treasury Department Report, McLaughlin, Ellig, and Shamoun found that the

Figure 1. Studies Assessing the Effect of Occupational Licensure on Quality



Sources: **Positive:** Arlene Holen, *The Economics of Dental Licensing* (Washington, DC: Public Research Institute, Center for Naval Analysis, 1978); Samuel Claude Martin, "An Examination of the Economic Side Effects of the State Licensing of Pharmacists" (doctoral dissertation, University of Tennessee, 1982); Roger Feldman and James W. Begun, "The Effects of Advertising: Lessons from Optometry," *Journal of Human Resources* 13 supplement (1978): 247-62. **Unclear, mixed, or neutral:** Kathryn Healey, "The Effect of Licensure on Clinical Laboratory Effectiveness" (doctoral dissertation, University of California, Los Angeles, 1973); John J. Phelan, *Regulation of the Television Repair Industry in Louisiana and California: A Case Study*, *Federal Trade Commission*, 1974; John F. Cady, *Restricted Advertising and Competition: The Case of Retail Drugs* (Washington, DC: American Enterprise Institute, 1976); Robert J. Thornton and Andrew R. Weintraub, "Licensing in the Barbering Profession," *Industrial and Labor Relations Review* 32, no. 2 (1979): 242-49; Ronald Bond *et al.*, *Effects of Restrictions of Advertising and Commercial Practice in the Professions: The Case of Optometry*, *Federal Trade Commission*, 1980; Chris Paul, "Physician Licensure Legislation and the Quality of Medical Care," *Atlantic Economic Journal* 12, no. 4 (1984): 18-30; David S. Young, *The Rule of Experts: Occupational Licensing in America* (Washington, DC: Cato Institute, 1987); Morris M. Kleiner and Daniel L. Petree, "Unionizing and Licensing of Public School Teachers: Impact on Wages and Educational Output," in *When Public Sector Workers Unionize*, ed. R. B. Freeman and C. Ichniowski (Chicago: University of Chicago Press, 1988), 305-19; D. D. Goldhaber and D. J. Brewer, "Does Teacher Certification Matter? High School Teacher Certification Status and Student Achievement," *Educational Evaluation and Policy Analysis* 22, no. 2 (2000): 129-45; Morris M. Kleiner and Robert T. Kudrle, "Does Regulation Affect Economic Outcomes? The Case of Dentistry," *Journal of Law and Economics* 43, no. 2 (2000): 547-82; David Blau, "Unintended Consequences of Child Care Regulations," *Labour Economics* 14, no. 3 (2007): 513-38; Joshua Angrist and Jonathan Guryan, "Does Teacher Testing Raise Teacher Quality? Evidence from State Certification Requirements," *Economics of Education Review* 27, no. 5 (2008): 483-503. **Negative:** Timothy Muris and Fred McChesney, "Advertising, Consumer Welfare, and the Quality of Legal Services: The Case of Legal Clinics" (Working Paper 78-5, Law and Economics Center, University of Miami, Miami, FL, 1978); Sidney Carroll and Robert Gaston, "Occupational Restrictions and the Quality of Service Received: Some Evidence," *Southern Economic Journal* 47, no. 4 (1981): 959-76; John E. Kwoka, "Advertising and the Price and Quality of Optometric Services," *American Economic Review* 74, no. 1 (1984): 211-16; Mark C. Berger and Eugenia F. Toma, "Variation in State Education Policies and Effects on Student Performance," *Journal of Policy Analysis and Management* 13, no. 3 (1994): 477.

most common finding was neutral, mixed, or unclear. Three studies found that occupational licensure positively affects quality while four found that it negatively affects quality.

Licensure and Prices

Economic theory predicts that a restriction in supply will result in higher prices. And, indeed, the empirical research consistently finds this to be the case. According to the Treasury Department Report,

The evidence on licensing's effects on prices is unequivocal: many studies find that more restrictive licensing laws lead to higher prices for consumers. In 9 of the 11 studies we reviewed . . . significantly higher prices accompanied stricter licensing.²³

Similarly, McLaughlin, Ellig, and Shamoun found that licensure increased prices in all 19 of the studies they surveyed, ranging from optometry and law to dentistry and cosmetology.²⁴

The effects of these increased prices are not trivial. For example, state nurse practitioner licensing is estimated to increase the price of a well-child checkup by 3 to 16 percent,²⁵ dental hygienist and dental assistant licensing is estimated to increase the price of a dental visit by 7 to 11 percent,²⁶ and optometry licensing is estimated to increase the price of eye care by 5 to 13 percent.²⁷ What's more, none of these studies found that licensing increased quality.

Licensing and Access to Employment

The commission asks, "What is known about the connection between labor market research and competition research?"

Industry domination of licensing boards creates high barriers to employment. Tables 2 and 3 provide a snapshot of Michigan and Wisconsin board composition. Boards in both states are required by statute to have a majority of members who are license holders.²⁸ When industry members create the standards for

entry into their professions, they have an incentive to implement burdensome entry requirements to protect themselves from competition. In effect, licensing makes entry into a profession more difficult without necessarily making the public safer.²⁹

On some boards, membership shrinks to the lowest statutorily-mandated number of professionals,

leaving public seats vacant. Wisconsin’s boards in particular demonstrate this problem.

Research suggests that these barriers built by occupational licensing boards impact particular communities. For example, military spouses are more likely to be in licensed professions and more likely to relocate from one licensing regime to another.³⁰

Table 2. Composition of Select Michigan Boards

| BOARD | INDUSTRY MEMBERS | TOTAL | PERCENTAGE INDUSTRY |
|--|------------------|-------|---------------------|
| Michigan Board of Veterinary Medicine ^a | 6 | 9 | 67% |
| Michigan Board of Cosmetology ^b | 6 | 9 | 67% |
| Michigan Board of Barber Examiners ^c | 6 | 9 | 67% |
| Michigan Board of Social Work ^d | 6 | 9 | 67% |
| Michigan Board of Massage Therapy ^e | 7 | 11 | 64% |
| Michigan Board of Athletic Trainers ^f | 6 | 11 | 54% |

Note: The Board of Cosmetology currently has only two public members, meaning 75 percent of its positions are filled by industry members. The Board of Barber Examiners currently has one vacant professional member position, meaning that 56 percent of the board is filled by industry members.

Sources: ^a Michigan Department of Licensing and Regulatory Affairs, “LARA—Michigan Board of Veterinary Medicine,” accessed October 6, 2017, http://www.michigan.gov/lara/0,4601,7-154-72600_72603_27529_27555-59195--,00.html.

^b Michigan.gov, “Board of Cosmetology,” accessed October 6, 2017, http://www.michigan.gov/snyder/0,4668,7-277-57738_57679_57726-250079--,00.html.

^c Michigan.gov, “Board of Barber Examiners,” accessed October 6, 2017, http://www.michigan.gov/snyder/0,4668,7-277-57738_57679_57726-249981--,00.html.

^d Michigan Department of Licensing and Regulatory Affairs, “LARA—Michigan Board of Social Work,” accessed October 6, 2017, http://www.michigan.gov/lara/0,4601,7-154-72600_72603_27529_27554-70397--,00.html.

^e Michigan.gov, “Michigan Board of Massage Therapy,” accessed October 6, 2017, http://www.michigan.gov/snyder/0,4668,7-277-57738_57679_57726-250624--,00.html.

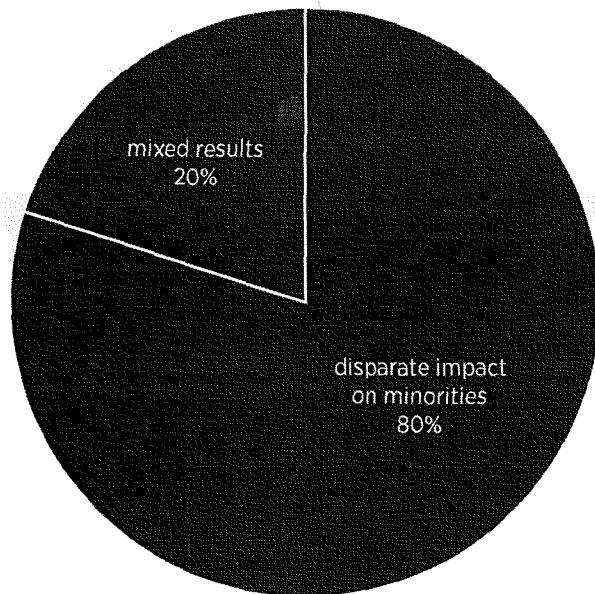
^f Michigan Department of Licensing and Regulatory Affairs, “LARA—Michigan Board of Athletic Trainers,” accessed October 6, 2017, http://www.michigan.gov/lara/0,4601,7-154-72600_72603_27529_45355-170067--,00.html.

Table 3. Composition of Select Wisconsin Boards

| BOARD OR COUNCIL | STATUTORY BOARD COMPOSITION | | | ACTUAL BOARD COMPOSITION | | |
|--|-----------------------------|---------------|---------------------|--------------------------|---------------|---------------------|
| | INDUSTRY MEMBERS | TOTAL MEMBERS | PERCENTAGE INDUSTRY | INDUSTRY MEMBERS | TOTAL MEMBERS | PERCENTAGE INDUSTRY |
| Respiratory Care Practitioners Examining Council | 3 | 5 | 60% | 3 | 3 | 100% |
| Athletic Trainers Affiliated Credentialing Board | 4 | 6 | 67% | 4 | 4 | 100% |
| Occupational Therapists Affiliated Credentialing Board | 5 | 7 | 71% | 4 | 4 | 100% |
| Hearing and Speech Examining Board | 8 | 10 | 80% | 7 | 7 | 100% |
| Dentistry Examining Board | 9 | 11 | 82% | 9 | 9 | 100% |

Source: Wisconsin Department of Safety and Professional Services, “License/Permit/Registrations,” accessed October 30, 2017, <http://dsps.wi.gov/Licenses-Permits/Credentialing>.

Figure 2. Studies Assessing the Effect of Occupational Licensure on Minorities



Sources: **Disparate impact:** Stuart Dorsey, "The Occupational Licensing Queue," *Journal of Human Resources* 15, no. 3 (1980): 424–34; Maya Federman, David Harrington, and Kathy Krynski, "The Impact of State Licensing Regulations on Low-Skilled Immigrants: The Case of Vietnamese Manicurists," *American Economic Review* 96, no. 2 (2006): 237–41; Joshua Angrist and Jonathan Guryan, "Does Teacher Testing Raise Teacher Quality? Evidence from State Certification Requirements," *Economics of Education Review* 27, no. 5 (2008): 483–503; David E. Harrington and Jaret Treber, *Designed to Exclude* (Arlington, VA: Institute for Justice, February 2009). **Mixed results:** Marc Law and Mindy Marks, "Effects of Occupational Licensing Laws on Minorities: Evidence from the Progressive Era," *Journal of Law and Economics* 52, no. 2 (2009): 351–66.

Licensure also presents a higher barrier to immigrants since many states require domestic work experience. For ex-offenders, occupational licensure is particularly burdensome as most states make it impossible for those with a past conviction to obtain an occupational license.

As shown in figure 2, McLaughlin, Ellig, and Shamoun's survey of the literature shows that licensure was found to disparately affect ethnic minorities in four of five studies.³¹

REFORM

Lastly, the commission asks, "What are the alternatives to occupational licensure? Are there other

forms of government regulation—such as certification, registration, or mandatory bonding—that might serve some of the consumer protection goals of licensure? What types of private initiatives or market-based solutions might be adequate substitutes for licensure? What is known about the comparative advantages and disadvantages of such alternatives, either generally, for certain types of occupations, or for individual occupations?"

Licensure is not the only or the most effective way to ensure quality.³² While occupational licensure is intended to protect consumers from harm, there are many other less-burdensome mechanisms to promote public safety. For instance, liability law and civil and criminal laws against fraud protect consumers.³³ In addition, a host of private mechanisms ensure that market providers are accountable.³⁴ These include private certifications, insurance, bond-posting, brand reputation, customer review platforms like Yelp and Google reviews, and the third-party validation of organizations like Angie's List, Consumer Reports, and Underwriters Laboratories. Competition itself may be the best alternative to licensure. As the economist Alfred Kahn put it after decades of extensive work as a regulator and researcher, "Whenever competition is feasible, it is, for all its imperfections, superior to regulation as a means of serving the public interest."³⁵

Policymakers wishing to reduce the social costs of their state's occupational licensure could take the following steps:

- 1) Pass legislation that sets an ambitious goal for the elimination of licenses and the reduction in licensing burdens.
- 2) Establish an independent commission charged with examining the state's licensing laws. Its first task should be to identify each license the state requires as well as the burdens associated with each license (fees, exams, required training, education, experience, and other limitations). The

| | |
|--|--|
| BEGIN WITH A BLANK SLATE | Tastes, technology, and prices change. So analysts should not be beholden to past practices and should approach their task as if they were starting anew. |
| DEFINE THE NATURE OF THE PROBLEM | Is there a systematic market failure that needs to be addressed? If not, occupational regulation is probably not the answer. Keep in mind that entrepreneurs have an incentive to come up with their own solutions to market failures. |
| IDENTIFY ALTERNATIVE SOLUTIONS TO OCCUPATIONAL REGULATION | This should include the alternative of deregulation. It should also include reliance on both private governance (competition, bond-posting, reputation feedback mechanisms, third-party evaluation, etc.) and public governance (deceptive trade practice law, registration, certification, etc.). |
| IDENTIFY THE POTENTIAL COSTS OF REGULATION | These include higher consumer prices; inconveniences such as diminished access to products and services; higher entrance fees, exam costs, education costs, etc.; rent-seeking waste; productive inefficiencies that arise when firms and providers are protected from competition; and dynamic losses that accrue over time as protected firms and providers are less likely to adapt and innovate. |
| IDENTIFY THE POTENTIAL BENEFITS OF REGULATION | What systematic market failure is the regulation intended to address? Remember that the profits of incumbent firms and their employees are not legitimate benefits of regulation since these gains come at the expense of consumers and would-be competitors. |
| MEASURE COSTS AND BENEFITS | Whenever possible, an objective measure of costs and benefits should be produced. When that is impossible, analysts should acknowledge that certain judgements are subjective. |

commission should be charged with evaluating all licenses, should not be dominated by members of the licensed professions, should include consumer representatives and representatives from organizations devoted to assist job-seekers, and should include third-party experts such as academics who have no financial stake in licensure. Furthermore, the commission should be guided by a set of criteria for evaluating regulations, as listed in table 4.

- 3) The commission should be charged with performing a comprehensive review of all occupations, with the goal of identifying licensure requirements that can be eliminated or reformed. The authorizing legislation should commit elected officials to accepting the commission’s recommendations in their entirety or not at all.

The last provision is designed to overcome the public choice problems that plague licensure reform. In particular, whenever any individual license is evaluated,

concentrated members of the industry are typically able to organize in defense of the license, while diffuse consumers and would-be competitors are unable to organize in opposition. The institutional structure that we recommend borrows elements from other reforms that have succeeded in eliminating favoritism.³⁶ In particular, it allows elected officials to cast conspicuous votes in the public interest while giving them some degree of “cover” from the special interests that will inevitably be harmed by the elimination of their regulatory privilege.

NOTES

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 4. *Ibid.*, 3.
 5. *Ibid.*
 6. Dick M. Carpenter II et al., *License to Work: A National Study of Burdens from Occupational Licensing* (Arlington, VA: Institute for Justice, April 24, 2012), 13.
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 31. The fifth study, which only found a disparate effect of licensure in one profession (barbering), has been criticized. See Daniel Klein, Benjamin Powell, and Evgeny Vorochnikov, "Was Occupational Licensing Good for Minorities? A Critique of Marc Law and Mindy Marks," *Econ Journal Watch* 9, no. 3 (September 2012): 210–33.

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33. For the benefits of ex-post sanctions as opposed to ex-ante sanctions, see Adam Thierer, *Permissionless Innovation: The Continuing Case for Comprehensive Technological Freedom*, 2nd ed. (Arlington, VA: Mercatus Center at George Mason University, 2016).
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November 20, 2019

TO: Senate Committee on Public Benefits, Licensing and State-Federal Relations

FR: Michael Tierney, Legislative Liaison – Department of Safety and Professional Services

Re: Senate Bill 541

Senator Kapenga and Committee members,

Thank you for the opportunity to offer testimony on Senate Bill 541 related to occupational licensure reports. Secretary Designee Crim is interested in exploring opportunities to ensure licensure provides effective and meaningful public protection. Senator Kapenga, we were pleased to be able to provide your office with feedback related to SB 541. As you move forward with the legislative process, it is our hope that the Department's feedback will inform your thought process and discussions.

Since January, the focus of the Department under Secretary Designee Crim has been on the efficient and effective operation of the agency. As such, she has been observing what works, taking note of problems and pursuing the substantive changes when necessary to meet customer needs and ensure public safety. I would like to briefly mention a couple of the measures we are undertaking to improve the licensure process for all current and future license holders.

Earlier this year, Department staff reported that there were cases of licenses taking 3 to 6 months longer to process because the Department had to wait for primary source documents to be sent by other states. Secretary Designee Crim initiated a policy that allows electronic verification of documents that primary sources place on the internet. This would be similar to how in Wisconsin, the department can obtain some legal records from CCAP. Our staff is now empowered to obtain primary source documentation online from states and other government agencies, when available. This results in faster application processing.

The Department was also made aware of license delays due to legal reviews for people recently released from correctional institutions. Secretary Designee Crim has partnered with DOC to implement a process for inmates to obtain a legal predetermination for licensure before their release. This ensures that after participating in DOC training for barbering, cosmetology or other licensed professions, former inmates will have a more seamless pathway to meaningful and sustained employment. This will also assist with reducing recidivism.

These are just two examples of the process improvements that will allow the department to better support both Wisconsin's citizens and its economy while protecting public safety.

Secretary Designee Crim recognizes that many of our partners in the legislature share her goal of moving people quickly into the workforce while ensuring the safety of the citizens of Wisconsin. That is why she has partnered with Senators Kooyenga and Johnson to make improvements in statutes governing the licensure process. This legislation will focus on addressing issues with legal review requirements in order to provide more certainty for applicants undergoing legal review and to allow them to get to work more quickly while continuing to ensure the safety of Wisconsin's citizens.

Secretary Designee Crim welcomes the opportunity to work with any members of the Senate, Assembly and the public on occupational licensure matters. Once again, thank you for the opportunity to testify and look forward to answering questions that you may have.



November 20, 2019

Chairman Kapenga and members of the Senate Committee on Public Benefits, Licensing and State-Federal Relations:

Thank you for the opportunity to testify today in support of Senate Bill 541. Americans for Prosperity applauds Senator Kapenga and Representative Hutton for introducing SB 541, a bill that would establish a new occupational licensing sunrise review process. We believe a strong sunrise review process would give Wisconsin the opportunity to ensure that our government doesn't create needless new barriers to employment, while still giving proper oversight to any valid public health and safety concerns.

AFP fights to reduce barriers to opportunity across the country, and we believe occupational licensing reform is critical to improving opportunity for job seekers and consumers. Increasing licensing burdens in Wisconsin would likely reduce employment opportunities for many Wisconsinites while cutting off rungs on the economic mobility ladder for people trying to improve their lives. A recent national study found that current governmental licensing barriers already cost Wisconsin over 37,000 jobs, \$133 million in deadweight economic losses, and over \$3.7 billion in misallocated resources annually¹.

Other studies indicate that many government licenses actually have negative effects on health and safety². And research also shows that in more onerously licensed states, entrepreneurship rates are lower among low-income residents³, recidivism rates are higher for ex-offenders⁴, and other unintended consequences such as increased crime rates⁵ occur due to the decreased employment opportunities. Unfortunately, another study notes that Wisconsin already licenses 42 of 102 common, low-income occupations, with 38 of those licenses added between 1993-2012 alone, highlighting the type of rapid growth in licensure that makes SB 541 a timely bill for consideration^{6,7}.

SB 541 would create a formal review process for any newly proposed government occupational licenses, giving lawmakers, government officials, and the general public a better opportunity to scrutinize new burdens that could be imposed on the Wisconsin workforce. Among other provisions, SB 541 would require the Department of Safety and Professional Services (DSPS) to provide a review of proposed licenses within 30 days and present findings to the legislature, providing information about estimated costs to acquire licenses, the estimated number of people impacted, and whether there are less restrictive means to address any valid health and safety concerns.

¹ https://ij.org/wp-content/uploads/2018/11/Licensure_Report_WEB.pdf

² https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf

³ <https://goldwaterinstitute.org/article/bootstraps-tangled-in-red-tape/>

⁴ <https://research.wpcarey.asu.edu/economic-liberty/wp-content/uploads/2016/11/CSEL-Policy-Report-2016-01-Turning-Shackles-into-Bootstraps.pdf>

⁵ <https://irap.scholasticahq.com/article/3760-occupational-licensure-and-property-crime>

⁶ https://ij.org/wp-content/themes/ijorg/images/tw2/License_to_Work_2nd_Edition.pdf

⁷ <https://archbridgeinst.wpengine.com/wp-content/uploads/2018/04/Too-Much-License-1.pdf>

While we speak today strongly in favor of SB 541 and the improvements to the current licensing process it would make, we would like to note a couple ways in which this bill might be strengthened for the committee's consideration.

- Clear instructions on what alternatives to licensure are more effective should be clearly laid out for agency officials to use in preparation of the sunrise reports.
- The 30-day turnaround for licensing review should be extended long enough to ensure that Wisconsin lawmakers get a more accurate picture of the significant costs new licenses will impose on the economy and workers.
- Transitioning the review of licenses to a more independent body than DSPS should be considered.
- Any limitations on the accuracy of estimates provided should be required to be well-documented in the reports.

Ultimately, AFP believes government's primary role should be preventing and removing barriers to opportunity. When it comes to licensing, the least restrictive means possible should be enforced by government to protect public health and safety while preserving choice and opportunity for the public. While we look forward to discussing ways that a sunrise review process might be further strengthened, we strongly encourage the committee to support SB 541.

Thank you for the opportunity to provide comments in support of Senate Bill 541 today. AFP-WI thanks Senator Kapenga and Representative Hutton for authoring this important legislation.

Sincerely,

Megan Novak
Legislative Director
Americans for Prosperity - Wisconsin



DATE: November 20, 2019
TO: Members of the Senate Committee on Public Benefits, Licensing and State-Federal Relations
FROM: The Wisconsin Academy of Nutrition and Dietetics
RE: Senate Bill 541

Chairman Kapenga, Vice-Chair Craig, Ranking Member Johnson, and committee members,

Thank you for the opportunity to provide testimony for informational purposes on Senate Bill 541.

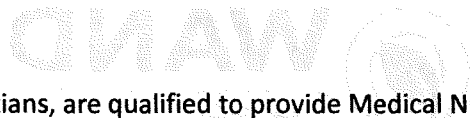
My name is Tracey Elmes and I work as a Clinical Registered Dietitian Nutritionist at SSM Health St Mary's Care Center, which is a 184 bed skilled nursing facility here in Madison. I completed my undergraduate degree at Miami University in Oxford, Ohio and Dietetic Internship and Master's Degree in Clinical Nutrition at Rush University Medical Center in Chicago and have been practicing for over 25 years. I currently also serve as the Public Policy Coordinator for the Wisconsin Academy of Nutrition and Dietetics

My name is Cassie Vanderwall and I am the Director of the Dietetic Internship program at UW Health with clinical appointments in the Pediatric Specialty Clinics at AFCH and academic appointments in the School of Medicine and Public Health at UW. I completed my B.S. at the Univ of IL in Urbana Champaign and my M.S. in conjunction with my dietetic internship at Rush University in Chicago. I returned to Rush recently to complete my PhD in Health Sciences. I presently serve as the consumer protection coordinator for the WI Academy of Nutrition and Dietetics.

Thank you for the opportunity to speak about the benefits of professional regulation from the perspective of a credentialed healthcare provider currently regulated by DSPS. We are representing the opinion of the Wisconsin Academy of Nutrition and Dietetics (WAND), a statewide organization of over 1500 registered dietitian nutritionists (RDNs) and dietetic technicians, registered (DTRs).

We RDNs at WAND are continually striving to promote the health and safety of the public we serve. Registered Dietitian Nutritionists would welcome reports prepared by DSPS that depict an evaluation of the potential for unregulated practice of the professions and likewise evaluations of expected successes. We also would agree it is important to continually review the least restrictive regulation required to protect the public—CMS will do this for our profession in many settings such as hospitals and long term care—as we in the nutrition field incorporate may tiers of practitioners, such as Certified Dietary Mangers and Dietetic Technicians Registered.

Being an organization such as WAND, an affiliate of the Academy of Nutrition and Dietetics, we are in constant collaboration with all states regarding professional regulation of nutrition professionals as it not only impacts public safety but business issues given we often provide services to patients and clients from neighboring states. This collaboration and consistency with professional regulation with other states will continue to gain importance as practices such as telehealth continue to grow. Finally, as proponents of good stewardship, we at WAND advocate for appropriate analysis of the costs associated with professional regulation. We want to be able to provide the most quality and cost-effective nutrition care possible.



Credential nutritionists, or dietitians, are qualified to provide Medical Nutrition Therapy (MNT) and in many states are the sole provider of the nutrition care process which includes MNT. This therapy entails a detailed nutrition, social and medical history and a nutrition-related physical exam. These data are used to craft an individualized therapeutic diet that is prescriptive in calories, protein, vitamins, minerals and fluids. RDNs and DTRs work alongside physicians, nurses and other allied healthcare professionals on the multidisciplinary healthcare teams in a variety of settings from farm to fork.

To obtain the RDN credential, an individual must earn a B.S. degree and complete a minimum of 1200 hours of supervised dietetic practice before being eligible to sit for the National Exam. In 2024, the profession will require a graduate degree before eligibility is granted for the board exam. Once credentialed, RDNs must maintain 75h of continuing education every 5 years.

These academic and professional qualifications define credentialed nutritionists, or dietitians, and are not prohibitive to individuals entering the nutrition workforce; there are over 25 jobs and opportunities for non-credentialed nutritionists in the field of food and nutrition.

Credentialing is essential to ensuring consumer safety and protection as well as quality of care. Similar to the measures described in Senate Bill 541, WAND makes a practice to accrue stories of how RDNs benefit the health of WI and save healthcare dollars by preventing disease and extending medical care. Unfortunately, we have also accrued accounts where non-credentialed individuals pose harm to Wisconsin citizens.

One such story is about a patient who was pursuing a kidney transplant and thus was following a complicated diet restricted in salt, potassium and phosphorus. He had recently joined a gym and a trainer was encouraging him to follow a Paleo diet which is quite high in the restricted nutrients. The patient consulted his RDN before making the change and likely saved his own life.

Another story involves a young girl with type I diabetes- her body doesn't make insulin on its own. She was experiencing significant digestive distress and consulted a naturopath in the area under the supervision of her mother. This provider encouraged her to follow a very low carbohydrate diet as a remedy for her GI issues. After 2 weeks on this plan, she had lost a significant amount of weight and presented in the emergency department with diabetes ketoacidosis as a result of inadequate energy, carbohydrate and insulin. After her blood sugars were stabilized and she was rehydrated, she was referred to the credentialed nutritionists at a digestive health center and has now restored her weight, energy and is free from the digestive ailments, too.

These stories highlight the necessity for evidence-informed training and practice, as well as, supervision in the field of nutrition. We are glad Senate Bill 541 requires a report that includes "an evaluation of the potential for the unregulated practice of the profession". Professional regulation elevates a profession and provides a mechanism for oversight to ensure safe, evidence-based practice that promotes health and well-being and reduces the risk of harm.

RDNs are focused on quality care and continued improvement. We encourage the requirement for all professions regulated by DSPS to do the same as suggested in Senate Bill 541. Thank you for your time, and we are willing to take any questions.



Members of the Committee:

My name is Carl Sims and I am a Senior Policy Analyst at The Council of State Governments. The Council of State Governments (CSG) is a nonpartisan membership organization that represents the three branches of state government. We work with the elected state that are our members to promote excellence in state government through research and analysis, policy convenings and direct technical assistance.

Over the past three years, CSG, in partnership with the National Governors Association and National Conference of State Legislatures, has provided technical assistance to a group of 16 states, including Wisconsin, in a Department of Labor funded project on occupational licensure reform. CSG and our partners are working with these states directly through a consortium model to examine state occupational licensing policy, learn from the best practices of other states and identify state specific actions to reduce barriers to labor market entry and improve portability and reciprocity.

The efforts of the consortium states and others are in part a result of the historical growth of workers requiring a license. In response, states are finding ways to ensure licensing is evidence based, clearly addresses the protection of public health and safety, and is not overly burdensome. For example, an increasingly popular policy approach is for states to prioritize, whether by legislative mandate or in practice, the use of the least restrictive form of regulation.

To ensure a consistent application of these principles, the use of policy tools such as sunrise and sunset reviews are becoming a major part of the discussion.

Sunrise Reviews

A sunrise review is a formal analysis of newly proposed occupational regulations, such as credentialing, or an amendment to existing requirements and scope of practice. They are the counterpart to sunset reviews, which examine existing occupational regulation under a prescribed process and timeline.

Sunrise reviews allow states to study the proposed regulations in a consistent and detailed manner. Typically, they consider items such as the proposed regulation's economic impacts and effects on public health and safety, as well as an historical analysis of previous credentialing efforts. This usually involves the inclusion of a cost-benefit analysis in the review which allows the state legislature to assess the net impact of regulation. Further, these reviews are often evaluated against a state's statutorily defined criteria of when credentialing is necessary.

The results of the review allow states to act on proposals with thorough, evidence-based findings.



States with Sunrise Reviews

The use of sunrise reviews for occupational credentialing are not new policy inventions, having first been implemented by states in the 1970s. Currently thirteen states have formal and active sunrise processes in place, including Arizona, Colorado, Georgia, Florida, Hawai'i, Maine, Minnesota, Nebraska, Ohio, Vermont, Virginia, Washington and West Virginia.

Common Characteristics of Sunrise Legislation

States vary widely in the scope of practice and discretion afforded to those responsible for completing a sunrise review. However, while there is no universal design to sunrise legislation, there are certain common characteristics shared amongst the states:

Types of Occupations Considered

The majority of states employ the same sunrise review process for any occupation being considered for new regulation. Others have specific processes and requirements for certain occupational fields, such as health care. For example, Arizona has established different review criteria for health care and non-health care occupations. Another state with sunrise legislation, Washington, has designed for these reviews to just occur for health professions.

Review Requests

There are a variety of approaches to how sunrise reviews are initiated. Some states allow for the public to request that the legislature consider new regulations through an application process. These members of the public can include professional groups, individuals, or otherwise any proponent of the legislation. The public applications usually require the applicants to justify their call for increased regulation through an evidence-based approach.

Some states allow for an entity of state government to propose for new regulations. Others have elected for sunrise reviews to be automatically requested upon the introduction of legislation that falls within the scope of the sunrise statute. Discretionary authority for whether to conduct a review, however, is sometimes given to the responsible state agency, such as when a similar report was completed recently.

Responsible Entities

Sunrise reviews can be completed by an executive agency, legislative body, technical committee or the public applicant group.

The state of Georgia, for example, conducts its sunrise reviews through an occupational regulation review council composed of members from various state agencies. Other



states, like Vermont, have the reviews run through their department of professional licensing. Ohio, which passed sunrise legislation in 2019, authorized for the legislature to conduct sunrise reviews through its legislative service commission.

For sunrise applications completed by a public group, the findings are usually submitted to the appropriate entity for further review or included in a final report.

Review Contents

Reviews can include an assessment of the departmental resources necessary to implement and enforce the proposed regulation, previous efforts to address the problem presented, alternatives to credentialing previously considered, evidences of public harm caused during the practice of the occupation, data on the occupation's practitioners, the expected impact of the proposed regulation on the supply of practitioners and the cost of services or goods provided, and if the scope of practice being considered aligns similarly with another occupation.

After an assessment of the regulation proposal has been completed, the assigned state authority usually provides recommendations for the legislature. These can include recommendations on the form of regulation that may be necessary and the possible conditions for credentialing, such as educational and exam requirements.

Timeline for Reviews

States with sunrise legislation usually define in statute a due date for the reviews and/or applications. Typically, this due date is set in relation to either the start of an upcoming legislative session or a number of days after the associated legislation is introduced. However, some states do not mandate in statute a specific due date or specify that the review must be issued "in a timely manner".

After the completion of the sunrise reviews and its associated recommendations, they are typically submitted to the appropriate legislative body for consideration.

Report Archives

Some states have elected to publicly display the sunrise reports on a state webpage for retention purposes.

Regardless of the design of sunrise legislation, the states that employ their use do so to align their policy objectives and better identify when credentialing is essential. Further, these processes are preventative in nature and can reduce the need for future reform efforts. Sunrise reviews, therefore, are increasingly being seen as an effective policy option for occupational reform strategies.



November 20, 2019

Senate Committee on Public Benefits, Licensing and State-Federal Relations
Public Hearing, Senate Bill 541

Senator Kapenga and Members of the Committee:

Thank you for the opportunity to testify before you today in support of Senate Bill 541, which would require a review of all proposed occupational licenses in the State of Wisconsin. The Badger Institute has conducted research on occupational licensing and told stories of those affected by overly-restrictive regulations in the state for years. Through this work, we've found that too many Wisconsinites struggle to complete the requirements associated with occupational licenses and, even worse, many others are discouraged from entering certain fields that require a license at all.

We support Senate Bill 541 because it would ensure that occupational licenses are *only* used for their intended purpose: protecting public safety.

We understand that some type of regulation is sometimes necessary. But imposing the most-restrictive form of regulation on an industry is simply bad policy. Previous research shows that occupational licensing leads to fewer jobs,ⁱ higher prices for consumers,ⁱⁱ and disproportionately affects low-income households.ⁱⁱⁱ Unfortunately, though, it's the path that we see time and time again. There's a need or a desire for some type of regulation and then a rush to the most restrictive form of it. This way of thinking accounts for the widespread growth of licensing in the U.S. – now affecting nearly 30% of U.S. workers, up from just 5% in 1950.^{iv}

This bill aims to address this growth by requiring a substantive review process – often called a “sunrise review” – of all proposed occupational licenses in the state. The bill would evaluate whether the unregulated practice of the profession or occupation would harm the public, whether the public can reasonably be expected to benefit from requiring a profession or occupation to be licensed, the least restrictive regulation that would protect the public, a comparison of licensure requirements for that occupation in other states, and an estimate of the financial burden imposed on individuals or businesses involved in the profession as a result of the new requirement.

If the proposed license does not meet these qualifications, a less-restrictive form of regulation is considered. It is important to note, however, that these alternative options still protect consumers without raising strict barriers to entry.^v

Other states have implemented similar laws and found success in doing so. A 2015 report from the Obama Administration^{vi} points to sunrise reviews as an effective framework for occupational licensing reform. It cites states like Florida, which requires that licensing is only used when “the overall cost-effectiveness and economic impact of the proposed regulation . . . will be favorable” and “other types of less restrictive regulation would not effectively protect the public.”

Maine, meanwhile, implemented this review practice in 1995.

The State of Colorado established a sunrise review in 1985. From then until 2005, 109 proposals for new regulations were submitted. Licensing was recommended in 12 instances, and the legislature ultimately created a new regulation in only 19 instances.^{vii}

Sunrise laws have been effective elsewhere and would be beneficial here as well.

Occupational licensing should not be viewed as a binary decision (to license or not to license). Based on previous research and the criteria described in this bill, there are other entirely appropriate consumer protection options that should also be considered. This bill creates a process that will equip legislators with the necessary information to make these important decisions.

The Badger Institute is fully supportive of SB 541. Thank you for holding this hearing and listening to my testimony today.

Julie Grace
Policy Analyst
Badger Institute

ⁱ <https://ij.org/report/at-what-cost>

ⁱⁱ https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf

ⁱⁱⁱ https://www.mercatus.org/system/files/mclaughlin_thomas_chambers_and_waldron_-_policy_brief_-_the_regressive_effects_of_regulation_a_primer_-_v1.pdf

^{iv} https://www.brookings.edu/wp-content/uploads/2016/06/THP_KleinerDiscPaper_final.pdf

^v https://ij.org/wp-content/uploads/2017/11/Inverted-Pyramid_FINAL_cover.pdf

^{vi} https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf

^{vii} <https://www.cato.org/sites/cato.org/files/serials/files/regulation/2006/12/v29n4-record.pdf>

Eric Bott: Wisconsin needs licensing laws that work

Capital Times

November 13, 2019

At Americans for Prosperity, we believe in removing barriers so that every American can achieve their full potential — especially when those barriers make no sense.

Take, for example, Wisconsin's occupational licensing laws.

If you want to become a shampooer, you need to complete 233 days of education and experience, pass two exams and pay \$391 in fees .

Just down Lake Michigan, in Indiana, you don't need a government license.

Do we really need more stringent requirements than our neighbors? Do Hoosiers have hair that is harder to shampoo than Wisconsinites?

Looking at it the other way — is it possible that laws in Indiana are too lax? If that were the case, we might be hearing more about an outbreak of split ends in Indiana, but we aren't. It seems that those who live in other states that work in professions we license here in Wisconsin are operating just fine — indicating that our laws are the ones that are excessive.

There's no reason for lawmakers in Madison to impose requirements that serve no useful purpose and accomplish little except to incentivize people to look elsewhere for opportunity.

Contrary to a recent op-ed by state Rep. Jonathan Brostoff, we at AFP do not believe all credentialing and training are unnecessary, but we do believe that these requirements have to make sense and be effective.

Does it make sense for Wisconsin to require licenses for several occupations that remain unlicensed in most other states — for example, animal trainers and bartenders — especially when professionals in those states are performing just fine?

Does it also make sense for lower-risk professions to have much more stringent requirements than higher-risk ones? For example, cosmetologists in our state have to go through 10 times more training than emergency medical technicians.

And then there was the example of Green Bay-based barber Albert E. Walker. He had been cutting hair for almost two decades, often for members of the Green Bay Packers. The players trusted him to make them camera-ready for high-profile games. Two years ago, he almost had to close his shop due to educational licensing requirements — he possibly would have had to pay \$20,000 in tuition. Thankfully, we helped pass laws to remove these obstacles for barbers. Walker said it was “insulting” to have his level of experience and skill and not be able to run his own shop.

When it comes to the effectiveness of licensing laws to ensure quality and safety standards, there is legitimate reason to pause. According to an Obama administration study, “most research does not find that licensing improves quality or public health and safety.”

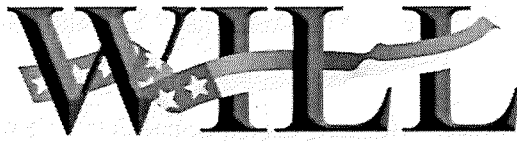
The reason we care so much about improving government licensing laws is that the implications aren’t merely academic. These laws impose real costs on Wisconsinites — especially those seeking lower income jobs. According to the Institute for Justice, licensing laws cost our state 37,000 jobs and the state’s economy as much as \$3.7 billion a year.

For 42 low- and moderate-income occupations, our state requires an average of 214 days of education and experience, passing one exam and paying \$259 in fees. Barbers, cosmetologists, massage therapists, pipelayers, security guards, veterinary technologists and others face steep fines for operating in Wisconsin without a license. These prerequisites present barriers to entry for those least able to afford them.

Simply put, it doesn’t make sense to accept policies that aren’t working and create unneeded obstacles for the most vulnerable.

So long as these barriers exist in Wisconsin, we will work with our partners to eliminate them. It’s why we will continue uniting with those in the state Legislature to reform our occupational licensing laws. We invite anyone who wants to expand opportunity for all to join us.

Eric Bott is state director of Americans for Prosperity-Wisconsin.



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Dear Chairman Kapenga and members of the Senate Committee on Public Benefits, Licensing and State-Federal Relations,

Thank you for the opportunity to submit testimony on Senate Bill 541 – a bill to establish a process and criteria for the Department of Safety and Professional Services (DSPS) to produce a report to the state legislature that objectively evaluates proposed occupational licenses.

Occupational licenses are the vast system of government-mandated credentials to work in certain jobs and professions. To earn a license, or other lesser credentials, prospective workers must acquire a minimum level of education, experience, and training.

Occupational licensing has grown to impact more and more workers over time. One out of five American workers now require a license to work – an increase from one in twenty in 1950. According to a 2018 DSPS report, “Wisconsin issues over one million occupational licenses for 280 different credential types.”¹

In recent years, bipartisan concern and consensus has emerged on the creeping growth of licensure and the particular roadblocks it erects for vulnerable populations, entrepreneurs, and innovators. Most prominently, President Barack Obama’s Council of Economic Advisors issued a white paper in 2015 that cited concerns about occupational licensing and the “substantial costs” that “raise the price of goods and services, restrict employment opportunities, and make it more difficult for workers to take their skills across state lines.”²

Research in recent years has validated the concern about occupational licensing and has moved states to enact reforms. A few critical findings include:

Fewer Jobs – Because licensing acts as a barrier to entry, it restricts the labor supply in certain regulated professions. The result is fewer jobs– as many as 37,000 fewer jobs in Wisconsin according to a 2018 Institute for Justice study.³

Higher Prices – The restriction of the labor supply by licensing serves to raise wages and raise prices. The UpJohn Institute estimates licensing costs U.S. consumers \$203 billion

¹ https://dsps.wi.gov/Documents/DSPS%20OLS%20Report_Dec2018.pdf

² https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf

³ <https://ij.org/report/at-what-cost/costs-of-occupational-licensing/>

each year.⁴ WILL estimated the cost reached nearly \$2 billion per year for Badger State families.⁵

Restricts Worker Mobility – Because occupational licensing has evolved at the state level, the result is a confusing and inconsistent patchwork of regulations from state to state. The Institute for Justice found that of 102 lower-income occupations with licensing regulations in at least one state, just 23 occupations are licensed in 40 or more states.⁶ For anyone in a licensed profession, in particular military spouses, moving across state lines can serve as a significant career setback – causing some to start over, invest in costly new training, or quit entirely.

Precisely because there is clear and growing evidence of the negative impact of occupational licensing, lawmakers, more than ever, need clear and objective information to properly weigh concerns over health and public safety along with the impact proposed licensing regulations may have on workers or the public.

Senate Bill 541, a bill to establish a “sunrise” review in Wisconsin, is a common-sense, bipartisan occupational licensing reform that will achieve these ends. The bill creates clear and objective criteria for DSPS to evaluate and report to lawmakers before new occupational licenses earn a vote. These criteria include:

- 1) an evaluation of the potential for the unregulated practice of the profession or occupation to harm the public;
- 2) an evaluation of whether the public can reasonably be expected to benefit from requiring the profession or occupation to be licensed;
- 3) an evaluation of what is the least restrictive regulation, as defined in the bill, of the profession or occupation that would effectively protect the public;
- 4) an analysis of licensure requirements for the profession or occupation in other states; and
- 5) an estimate of the total additional financial burden that will be imposed on an individual or business involved in the profession or occupation as a result of the license requirement.

This process will provide immense value to lawmakers. Too often, the push for new licenses or regulations come from interested parties and associations who, for reasons other than protecting the health and safety of the public, seek the government protection occupational licensing provides. A sunrise review process will, quite simply, ensure that lawmakers are evaluating the full impact of a new occupational license, the burden it will place on prospective workers, how other states choose to regulate the profession, and whether licensing is the proper way to effectively protect the public.

⁴ https://research.upjohn.org/cgi/viewcontent.cgi?article=1008&context=up_policypapers

⁵ <https://www.will-law.org/wp-content/uploads/2016/11/Licensure-FINAL.pdf>

⁶ <https://ij.org/report/license-work-2/>

At least 14 states – including ones as politically diverse as Arizona, Colorado, and Vermont – have active sunrise review laws.⁷ Wisconsin should join these states and ensure that lawmakers considering new occupational licenses have sufficient information to make good decisions for the State of Wisconsin.

We urge the legislature to pass SB 541. Thank you for your consideration.

Collin Roth
Policy Analyst
The Wisconsin Institute for Law & Liberty

⁷ <http://www.ncsl.org/research/labor-and-employment/improving-occupational-licensing-with-sunrise-and-sunset-reviews.aspx>